IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17718 of 2003

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RANCHODBHAI RAVJIBHAI SONAGRA

Versus

DISTRICT DEVELOPMENT OFFICER

Appearance:

1. Special Civil Application No. 17718 of 2003

MR NIKHIL JOSHI for MR PRADEEP PATEL for Petitioner

MS RV ACHARYA for Respondent No. 1

RULE SERVED for Respondent No. 1

MS MANISHA SHAH A.G.P. for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 28/12/2004

ORAL JUDGEMENT

1. The petitioner has by way of this petition challenged the order dated 24th November, 2003 passed by the Additional Development Commissioner, whereby the

order dated 29th September, 2003 passed by respondent no. 1 District Development Officer, under the provisions of Section 59 (1) of the Gujarat Panchayat Act, 1993 ["the Act" for short], suspending the petitioner from the office of the Sarpanch has been confirmed.

2. The short facts of the case are that the under the development programme of the Panchayat, the Principal of the school had received an amount of Rs.20,000=00 for the development of school playground. The Principal, thereafter handed over the said amount to the Panchayat on 26th June, 2002 and receipt to that effect was also issued. It is the case of the petitioner that the Talati of the Panchayat had made note on 28th June, 2002 to the effect that the amount of Rs.20,000=00 received from the Principal is given to the contractor for the development of the school playground.

3. The petitioner contended that thereafter a criminal complaint being Guna Register No. 46/2003 came to be filed on 26th April, 2003, for alleged commission of offence under Section 409 of the IPC. The petitioner further contended that later on, proceedings under Section 59 (1) of the Act were initiated against him and after notice, respondent no. 1 vide order dated 29th September, 2003 suspended the petitioner from the office of the Sarpanch.

4. Being aggrieved by the said order, the petitioner preferred an appeal against the State Government, wherein the Appellate Authority without considering the facts, vide order dated 24th November, 2003 dismissed the appeal and confirmed the order dated 29th September, 2003. Hence, this petition.

5. Mr. Joshi learned advocate for the petitioner has submitted that allegations against the petitioner is that he had collected the funds for the development of the school playground on 26th June, 2002 and had spent that amount on 11th November, 2002. He submitted that the amount which was collected was handed over to the Talati-cum-Mantri and the same was credited in the account of the panchayat on 28th June, 2002 by the Talati-cum-Mantri. The said documents are produced on record at annexure-A to the petition. He further submitted that the said document was produced before the District Development Officer, but the same was not considered by the authority in its true spirit. On the contrary, the authority has proceeded on the footing that from 28th June, 2002 till the payment is made i.e. 11/11/2002 the amount was with the Sarpanch.

6. Mr.Joshi learned advocate for the petitioner has in support of his case relied upon the decisions of this Court in the case of Narabhai Veljibhai Chaudhary v. R.S. Vaghela & Ors., reported in 1997 (1) [XXXVIII (1)] G.L.R. p. 599 and in the case of Kamlaben Rohitbhai Patel v. Addl. Development Commissioner & Ors., reported in 2001 (1) G.L.H. p.109.

6.1. Ms. Acharya learned advocate appearing for respondent no. 1 has submitted that the orders passed by the District Development Officer and Development Commissioner are just and proper and no interference is called for in the present petition.

7. Ms. Shah learned A.G.P. appearing for respondent no. 2 contended that since criminal compliant was filed under Section 409 and chargesheet is submitted, it is not proper for this Court to exercise the powers under Article 226 of the Constitution of India, qua setting aside the order passed by Additional Development Officer and District Development Officer. She has further submitted that the alleged offence of 26th June, 2003 was registered under Section 409.

8. Heard the learned advocates for the respective parties and perused the relevant record. From the record it seems that the finding is erroneous inasmuch as the amount was deposited for 28th June, 2002. Further the District Development Officer has not taken into consideration the fact that the amount was collected for development of the school playground and the same is spent for development of the school. It is true that there is procedural lapse on the part of the Sarpanch for two days i.e. 26th June, 2002 to 28th June, 2002, for not depositing the amount with the Panchayat. Further other charges were the part of the notice that was issued to the petitioner on 20th July, 2002. The charges against the petitioner was only misappropriation of an amount of Rs.20,000=00, which was not befitting to the Sarpanch. Further in the order of the District Development Officer it is held that work is done without following procedure. However, that was not part of the notice, which was issued on 20th July, 2002.

9. In view of the aforesaid, it is clear that the amount was deposited on 28th June, 2002, and that a criminal complaint was filed almost after 10 months, before which the said amount was deposited with the Panchayat on 28th June, 2002 and was spent on 11th November, 2002. Hence, the findings of both the

authorities with regard to misappropriation of the amount is not proper and is without any basis. Hence, no case is made out under Section 59 of the Gujarat Panchayat Act.

10. In the premises aforesaid, the petition is allowed. The order dated 24th November, 2003 at annexure-D and order dated 29th September, 2003 at annexure-C, passed by the authorities are quashed and set aside. The petitioner shall be allowed to function as Sarpanch. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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